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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Introduce Ordinance Amending Lodi Municipal Code, Title 1, General Provisions, by creating Chapter 1.10 Administrative Enforcement Provisions; and by repealing in its entirety Chapter 2.34, Administrative Procedures for Administrative Proceedings; and by Repealing and Re-Enacting Sections of Title 15, Buildings and Construction, Chapters 15.04 Through 15.30 of the Codes of the City of Lodi, and All Other Ordinances and Parts of Ordinances in Conflict Therewith To Add Administrative Citation and Hearing Procedures

MEETING DATE: April 5, 2006

PREPARED BY: Community Improvement Manager

RECOMMENDED ACTION: That the City Council Introduce an Ordinance Amending Lodi Municipal Code, Title 1, General Provisions, by creating Chapter 1.10 Administrative Enforcement Provisions; and by repealing in its entirety Chapter 2.34, Administrative Procedures for Administrative Proceedings; and Repealing and Re-Enacting Sections of Title 15, Buildings and Construction, Chapters 15.04 through 15.30 of the Municipal Code of the City of Lodi, and all other ordinances and parts of ordinances in conflict therewith to add Administrative Citation and Hearing procedures.

BACKGROUND INFORMATION: Presentations regarding current and proposed code enforcement processes were made to the City Council at the Shirtsleeve Meetings of September 13, 2005 and March 21, 2006. One of the goals of those presentations was to explore certain processes being used by code enforcement agencies throughout California that could be used in Lodi to make our code enforcement efforts more efficient and effective.

Most comprehensive code enforcement programs have a variety of both judicial and administrative remedies to enforce violations of Municipal Codes and applicable state codes. The City of Lodi's code enforcement program currently has **use** of various judicial remedies through criminal, civil and other legal remedy established by law. These remedies can be effective but are very time consuming and are often heavy-handed considering the nature of the violation. What is sought through the adoption of this ordinance *is* to establish the use of administrative citations and administrative enforcement hearings. These procedures are intended to create a more responsive code enforcement tool by providing notice to someone responsible for **conditions** or activities upon a property, as well as a forum to efficiently, expeditiously and fairly resolve issues raised in any administrative enforcement action. Furthermore, these procedures are intended to afford due process of law to any person directly affected by an administrative action.

APPROVED: 
Blair King, City Manager

The Administrative Enforcement Provisions proposed in this ordinance will establish specific administrative provisions for code enforcement actions, such as procedures for both the administrative Notice of Violation and the Administrative Citation. These provisions also include specific procedures for the abatement of nuisances, including the summary abatement of immediate hazard and nuisance conditions. These new administrative provisions are intended to replace those established in Chapter 2.34, that were found to be overly cumbersome and restrictive for our purposes and were only intended for use as the administrative provisions for Chapter 8.24 - Municipal Environmental Response and Liability Ordinance, which was repealed previously by Council.

One of the key elements of these provisions allows for the assessment of **administrative/civil** penalties. These administrative penalties start at \$100 per violation, per day, while civil penalties provide another alternative method of enforcement for more serious, blatant and/or egregious code violations and allow for the assessment of penalties of up to \$1000 per violation, per day.

An additional benefit of the administrative remedies, is that any fees, fines, and penalties assessed through the processes are kept within the jurisdiction, as opposed to the various **civil/judicial** remedies where the city receives only a very small percentage of the assessed fine or penalty. This supports the policy adopted by Council of making those who create the demand for additional code enforcement services responsible for the cost of those services.

The adoption of new Administrative Enforcement Proceedings will also effect certain sections of Lodi Municipal Code Chapter 3.01 – Business Tax Certification, Chapter 10.56 – Removal of Vehicles, Chapter 15.04 – Building Code, Chapter 15.20 – Fire Code, Chapter 15.24 – Housing Code, Chapter 15.28 – Abatement of Dangerous Buildings Code, Chapter 15.30 – Property Maintenance and Designation of Certain Kinds of Nuisances, and Chapter 15.31 Weed and Refuse Abatement; all pertaining to the appeal of decisions based upon those codes. Each of those Chapters will have their method of appeal amended to be consistent with the administrative hearing process.

Another key element of the proposed ordinance is the establishment of an administrative hearing process. This new process is intended to establish a more effective and complete method of providing due process for all aspects of the City's administrative code enforcement function. This new hearing process is intended to be available for the Community Improvement Division, Fire Department, Public Works Department, the Finance Department and any other department that has responsibility for enforcement of local codes and regulations.

In general, the hearing for any administrative action, whether that be a Notice of Violation, Admin Citation, or other administrative notice or action, **is** conducted by a hearing officer. A hearing officer cannot be a city employee, and their compensation cannot be conditioned directly or indirectly upon the amount of the fine or penalty assessed. After conducting the hearing, the hearing officer would make a decision to uphold or deny the administrative action. If the action is upheld (appeal denied), the City retains the fees collected. The proposed ordinance establishes fines in the amount of \$100 for the first Admin Citation, \$250 for the second Admin Citation, and \$500 for the third and all subsequent Admin Cites.

FISCAL IMPACT: In preparation of the budget for the Special Revenue Fund for the Community Improvement Division, it was estimated that an additional \$25,000 in revenue would be gained through Administrative Citations.

FUNDING AVAILABLE: Self-generating from fine revenue.



Ruby Palste, Interim Finance Director



Joseph Wood
Community Improvement Manager

Concurred: 

Randy Hatch
Community Development Director

Attachments

cc City Attorney
Community Development Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
AMENDING LODI MUNICIPAL CODE, TITLE 1 – “GENERAL
PROVISIONS”, BY CREATING AND ADDING CHAPTER 1.10 –
“ADMINISTRATIVE ENFORCEMENT PROVISIONS”

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. CHAPTER 1.10 – “ADMINISTRATIVE ENFORCEMENT PROVISIONS” is hereby
added to Lodi Municipal Code Title 1 – “GENERAL PROVISIONS”, as follows:

CHAPTER 1.10

ADMINISTRATIVE ENFORCEMENT PROVISIONS

Article I – Code Enforcement – Administrative Provisions

Sections:

- 1.10.010 Declaration of purpose
- 1.10.020 Definitions
- 1.10.030 Administrative enforcement authority
- 1.10.040 Authority to inspect
- 1.10.050 Code enforcement fees; purpose
- 1.10.060 Assessment of reinspection fees
- 1.10.080 Code enforcement fees exemption
- 1.10.090 Notification of assessment of reinspection fees
- 1.10.100 Collection of reinspection fee

Article II – Notice of Violation

Sections:

- 1.10.110 Notice of violation; procedures
- 1.10.120 Service of notices
- 1.10.130 Proof of notice
- 1.10.140 Recordation of notices of violation; purpose
- 1.10.150 Procedures for recordation
- 1.10.160 Service of notice of violation
- 1.10.170 Procedures to appeal recordation
- 1.10.180 Appeal hearing; recordation of notice
- 1.10.190 Notice of compliance; removal procedures
- 1.10.200 Prohibition against issuance of municipal permits
- 1.10.210 Cancellation of recorded notice of violation

Article III – Administrative Citations

Sections:

- 1.10.220 Administrative citations; authority
- 1.10.230 Administrative citations; procedures
- 1.10.240 Contents of administrative citation

- 1.10.250 Appeal of administrative citation
- 1.10.260 Fines for administrative citations
- 1.10.270 Failure to pay administrative fine
- 1.10.280 Allocation of administrative fine

Article IV – Abatement

Sections:

- 1.10.290 Abatements; declaration of purpose
- 1.10.300 Authority
- 1.10.310 General provisions
- 1.10.320 Abatement of a public nuisance by the City
- 1.10.330 Summary abatement
- 1.10.340 Authority
- 1.10.350 Procedures

Article V – Administrative Penalties

Sections:

- 1.10.360 Declaration of Purpose
- 1.10.370 Authority
- 1.10.380 Procedures; issuance of notice and order
- 1.10.390 Determination of civil penalties
- 1.10.400 Recovery of civil penalties
- 1.10.410 Cancellation of code enforcement lien
- 1.10.420 Administrative costs
- 1.10.430 Failure to comply with notice and order
- 1.10.440 Civil penalties hearing

Article VI – Administrative Hearings

Sections:

- 1.10.450 Administrative hearing procedures
- 1.10.460 Procedures for requesting an appeals hearing
- 1.10.470 Procedures for notification of administrative hearing
- 1.10.480 Procedures at administrative hearing
- 1.10.490 Failure to attend administrative hearing
- 1.10.500 Administrative order
- 1.10.510 Judicial review
- 1.10.520 Failure to comply with the administrative order; misdemeanor

Article I - CODE ENFORCEMENT - ADMINISTRATIVE PROVISIONS

Section 1.10.010 Declaration of purpose.

A. The City Council finds that the enforcement of the Lodi Municipal Code and applicable state codes throughout the City is an important public service. Code Enforcement is vital to the protection of the public's health, safety and quality of life. The City Council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative enforcement hearings and judicial proceedings. After consideration of the recommendations of the Community Improvement Division, the City Council further finds that a

comprehensive code enforcement system requires a variety of judicial remedies and administrative remedies to enforce violations of this Code and applicable state codes. The City Council also finds that there is a need to establish uniform procedures for administrative enforcement hearings conducted pursuant to this Code. It is the purpose and intent of the City Council to afford due process of law to any person who is directly affected by an administrative action. Due process of law includes: adequate notice, an opportunity to participate in the administrative hearing process and an adequate explanation of the reasons justifying the administrative action. These procedures are also intended to establish a forum to efficiently, expeditiously and fairly resolve issues raised in any administrative enforcement action. The City Attorney is authorized to develop policies and procedures relating to the qualifications, appointment and compensation of hearing officers, hearing officer powers, hearing procedures, scope of the hearing, subpoena powers and other matters relating to administrative enforcement hearings.

B. The procedures established in this Chapter shall be in addition to criminal, civil or other legal remedies established by law which may be pursued to address violations of this Code or applicable state codes and the use of this Chapter shall be at the sole discretion of the City.

Section 1.10.020 Definitions.

- A. ADMINISTRATIVE CITATION: means a document issued by a Community Improvement Officer to a person violating the provisions of this Code or applicable state code.
- B. ADMINISTRATIVE ORDER: means an order issued by an Administrative Hearing Officer after a hearing requiring a Responsible Person to correct violations, abate a public nuisance, pay administrative fines, civil penalties, administrative costs, authorize the City to abate a public nuisance, assess a Code Enforcement Lien or take any other action as authorized or required by this Code and applicable state codes.
- C. ASSESSMENT LIEN: means a lien recorded with the San Joaquin County Recorder's Office for the purposes of collecting outstanding administrative citation fines, civil penalties and administrative costs imposed as part of a cost recovery, administrative or judicial code enforcement action. It shall also mean the same as a Code Enforcement Lien.
- D. CODE ENFORCEMENT LIEN: see definition of Assessment Lien.
- E. CODE ENFORCEMENT OFFICER: means a person authorized to enforce violations of the Lodi Municipal Code, adopted Uniform Codes and applicable state codes within their City department's jurisdiction.
- F. DIRECTOR: shall include each of the directors of the following City departments: Planning and Community Development, Public Works, Parks, Recreation and Facilities, Municipal Utilities, Finance, and the Department of Public Safety and any of their designated agents or representatives within their jurisdiction.
- G. HEARING OFFICER (or Administrative Hearing Officer): means any person appointed by the City Attorney to preside over administrative hearings.

- H. NOTICE AND ORDER: means a document used in abatement actions and assessment of civil penalties involving serious code violations which provide notice of Municipal Code, adopted Uniform Codes or applicable state code violations and orders a Responsible Person to take certain steps to correct the violations within a definitive period of time. Civil penalties may also be imposed in conjunction with this Notice.
- I. NOTICE OF COMPLIANCE: means a document issued by a Director which represents that a property has been brought into compliance with the criteria set forth under this Code.
- J. NOTICE OF SATISFACTION: means a document or form which indicates that all outstanding civil penalties and costs have either been paid in full, or that the City has negotiated an agreed amount, or that a subsequent administrative or judicial decision has resolved the outstanding debt.
- K. NOTICE OF VIOLATION: means a written notice which informs a Responsible Person of code violations present on the subject property, lists the required compliance actions and contains specific information as required by this Code. The Notice of Violation may be recorded with the San Joaquin County Recorder's Office.
- L. OWNER: applied to a building or land, shall include any part owner, joint owner, tenant, tenant in common, joint tenant, of the whole or a part of such building or land.
- M. PERSON: unless it otherwise appears from the context as used, includes any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district, the State of California, its political subdivisions and/or instrumentalities thereof or any other entity which is recognized by law as the subject of rights or duties.
- N. PROPERTY OWNER: means the record owner of real property as listed on the last equalized assessment roll maintained by the San Joaquin County Assessor.
- O. RESPONSIBLE PERSON: means a person who a Director determines is responsible for causing, permitting, or maintaining a public nuisance or a violation of the Lodi Municipal Code, adopted Uniform Codes or applicable state codes. The term "Responsible Person" includes, but is not limited to, a property owner, tenant, person with a legal interest in the subject property, person in possession of the subject property or person that exercises custody and control over the subject property.
- P. SHALL is mandatory and MAY is permissive. However, the use of the word "shall" in this Chapter is not intended and shall not impose any mandatory duty to third parties by the City of Lodi, its commissions, boards, officers, agents or employees and is not intended and shall not impose any liability on the City of Lodi, its commissions, boards, officers, agents or employees.

Section 1.10.030 Administrative enforcement authority.

The Community Development Director, designated Community Improvement Officers, the Fire Chief and other City Directors and/or their designated agents have the authority and powers

necessary to determine whether a violation of this Code or applicable state codes exists and the authority to take appropriate action to gain compliance with the provisions of this Code or applicable state codes. These powers include the power to issue Notices of Violation, Administrative Citations, Notices and Orders, and civil penalties, the power to inspect public and private property and use the administrative remedies which are available under this Code, adopted Uniform Codes or applicable state codes.

Section 1.10.040 Authority to inspect.

A Director, a Community Improvement Officer or other duly authorized agent are authorized to enter upon any property or premises within the City to ascertain whether the provisions of this Code or applicable state codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence such as the use of a sound level measurement device to measure noise disturbances. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If an owner, occupant or agent or other Responsible Person refuses permission to enter or inspect, the Community Improvement Officer may seek an administrative inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure.

Section 1.10.050 Code enforcement fees; purpose.

A. The City Council finds there is a need to recover costs incurred by the City in its code enforcement efforts including time spent by City personnel inspecting and reinspecting properties throughout the City, preparing and posting the various notices that are required under this Code whenever a property is found to be in violation of a mandatory provision, processing a case file, towing inoperative vehicles, obtaining inspection warrants, and preparing for and appearing at Administrative Hearings, which procedures all become necessary when a Responsible Person fails to voluntarily correct code violations on his or her property. These additional code enforcement efforts are not usually undertaken or employed until after a Responsible Person has failed to respond on a voluntary basis to notices and/or warnings from the City or volunteers.

B. The City Council further finds the assessment of fees for the services listed in subsection A, are an appropriate method to recover costs incurred for the additional work that is undertaken by City Staff when a responsible person fails to voluntarily correct code violations on his or her property in a timely manner. The assessment and collection of these code enforcement fees shall not preclude the imposition of, and shall be in addition to, any administrative or judicial civil penalties or fines for violations of this Code or applicable state codes.

Section 1.10.060 Assessment of reinspection fees.

A. Whenever a Community Improvement Officer and/or designated staff inspects, reinspects processes a case file, prepares and posts a Notice of Intent to Abate, a Notice of Violation, Notice to Vacate, Notice and Order of Demolition, Abandoned Vehicle Abatement Notice, seeks and obtains an inspection warrant, prepares for and appears at an Administrative Hearing, or any other action as may be hereinafter designated by Resolution of the City Council,

for which an action has been initiated to obtain compliance with this Code or applicable state code, a Director shall assess the appropriate code enforcement fee against the Responsible Person.

Section 1.10.070 Amount of reinspection fees.

A code enforcement fee schedule shall be established and revised as necessary by the City Council to reflect current costs. The code enforcement fee schedule shall be filed in the City Clerk's office.

Section 1.10.080 Code enforcement fees exemption.

No fee shall be charged if any of the following circumstances exist:

- A. A Notice of Compliance has been issued;
- B. It is determined that the previously identified Responsible Person has not caused the code violation; or
- C. The Responsible Person fully complies with any Notice of Violation or warning before the compliance reinspection deadline set by Code Enforcement staff.

Section 1.10.090 Notification of assessment of reinspection fees.

- A. Where the assessment of code enforcement fees is authorized under this Chapter, the Director shall provide the Responsible Person with a written notice assessing code enforcement fees. The written assessment shall contain the following information: 1. The amount of fees charged; and 2. The corresponding dates when code enforcement action took place; and 3. A deadline by which the code enforcement fee must be paid.
- B. Notification of the code enforcement fee assessment shall be provided to the Responsible Person by any of the means outlined in this Chapter.
- C. Code Enforcement fees may be assessed as part of any judicial or administrative enforcement action as provided for in this Chapter.
- D. Code Enforcement fees collected pursuant to this Chapter shall not be duplicated in any other action to recover these identical costs.
- E. The failure of any Responsible Person to receive notice of the code enforcement fees shall not affect the validity of any fees imposed under this Chapter.

Section 1.10.100 Collection of reinspection fee.

The City shall collect the assessed code enforcement and late fees by the use of all appropriate legal means, including but not limited to: referral to the Finance Department for collection or assessment against the property.

Article II - NOTICE OF VIOLATION

Section 1.10.110 Notice of violation; procedures.

Whenever it is determined that a violation of this Code, adopted Uniform Codes or applicable state codes exists, the Director, the Community Improvement Officer or other duly authorized agent may issue a Notice of Violation to the Responsible Person(s). The Notice of Violation shall include the following information:

- A. The name of the Responsible Party;
- B. The name of the owner, if different from the Responsible Person;
- C. Street address of the property at issue;
- D. The code sections in violation;
- E. A description of the conditions which violates the applicable codes;
- F. A list of necessary corrections to bring the property into compliance;
- G. A deadline or specific date to correct the violations listed in the Notice of Violation;
- H. A list of the potential consequences for failure to comply with the Notice including, but not limited to: criminal prosecution, civil injunction, administrative abatement, administrative citations, civil penalties, revocation of permits, recordation of the Notice of Violation and withholding of future municipal permits.

Section 1.10.120 Service of notices.

Whenever any notice is required to be given under this Code, the notice shall be served in the following manner unless a different procedure is specifically stated to apply:

- A. Personal service or certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice shall be sent by regular mail to the Responsible Person. If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to regular mail.
- B. Posting the notice conspicuously on or in front of the subject property.
- C. Mailings to the Property Owner shall be sent to the address listed in the last equalized assessment roll of the San Joaquin County Assessor.
- D. In the event the Responsible Person is someone other than the Property Owner, a copy of the notice shall also be mailed to the Property Owner.

Service by certified or regular mail in the manner described above shall be effective on the date of mailing.

The failure of any person with an interest in the subject property to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this Chapter.

The notice requirements in this section do not apply to initial Notices of Violation, Courtesy Notices, which may be sent by regular mail. Service of a Courtesy Notice by regular mail is effective on the date of mailing.

Section 1.10.130 Proof of notice.

Proof of giving any notice may be made by the certificate of any officer or employee of the City, or by affidavit of any person over the age of eighteen years, which shows service in conformity with this Chapter, or other provisions of law applicable to the subject matter concerned.

Section 1.10.140 Recordation of notices of violation; purpose.

The City Council finds that there is a need to give notice of pending enforcement actions to persons who may subsequently acquire the property as a means by which to ensure the violations will be corrected. An appropriate method to accomplish this is through the issuance and recordation of Notices of Violation. The procedures established in this Chapter shall be in addition to criminal, civil, or any other remedy established by law which may be pursued to address violations of this Code or applicable state codes.

Section 1.10.150 Procedures for recordation.

- A. Once a Director has issued a Notice of Violation to a Responsible Person and the property remains in violation after the deadline established in the Notice of Violation, the Director may record the Notice of Violation with the San Joaquin County Recorder's Office.
- B. Before recordation, a Director shall provide to the Responsible Person a Notice of Intent to Record stating that a Notice of Violation will be recorded unless a written request to appeal this action is received pursuant to the procedures outlined in this Chapter. The letter shall be served in accordance with the methods set forth in this Chapter.
- C. If a written request to appeal is not received within the time frame specified, the Director may thereafter cause the Notice of Violation to be recorded, if the violations remain.
- D. The recorded Notice of Violation shall include the name of the Property Owner, the assessor's parcel number, the street address, the parcel's legal description, and a copy of the latest Notice of Violation.
- E. Any costs associated with recording or removal of the Notice of Violation may be assessed against the property as provided for in this Chapter.

Section 1.10.160 Service of notice of violation.

A copy of the recorded Notice of Violation shall be mailed to the Responsible Person and to the Property Owner and/or any other persons who have requested copies of such Notices pursuant to any of the methods of service set forth in this Chapter.

Section 1.10.170 Procedures to appeal recordation.

- A. An appeal of the Director's Notice of Intent to Record the Notice of Violation shall follow the procedures set forth in this Chapter.
- B. Upon receiving a written appeal, the Director shall schedule a hearing pursuant to the procedures set forth in this Chapter. The purpose of the hearing is for the Responsible Person or Property Owner to state any reasons why a Notice of Violation should not be recorded.
- C. The failure of any person to file an appeal in accordance with these provisions shall constitute a waiver of the right to an administrative hearing and shall not affect the validity of the recorded Notice of Violation.

Section 1.10.180 Appeal hearing; recordation of notice.

- A. At the appeal hearing, the Hearing Officer shall only consider evidence that is consistent with the City Attorney's rules and procedures for administrative hearings, and that is relevant to the following issues:
 - 1. Whether the conditions listed in the Notice of Violation violate the this Code or applicable state codes; and
 - 2. Whether the Director afforded the Responsible Person with due process by adhering to the notification procedures specified in this Chapter.
- B. If the Hearing Officer affirms the Director's decision, the Director may proceed to record the Notice of Violation.
- C. If the Hearing Officer determines that recordation is improper, the Hearing Officer shall invalidate the Director's decision to record the Notice of Violation.

Section 1.10.190 Notice of compliance; removal procedures.

- A. When the violations listed on the Notice of Violation have been corrected, the Responsible Person or Property Owner may file with the Director a written request for a Notice of Compliance on a form provided by the City.
- B. Once the Director receives this request, the Director shall reinspect the property within ten (10) days from receipt of the request to determine whether the violations listed in the Notice of Violation have been corrected and whether all necessary permits have been issued and final inspections have been performed.
- C. The Director shall provide a Notice of Compliance to the Responsible Person or Property Owner if the Director determines that:
 - 1. all violations listed in the recorded Notice of Violation have been corrected; and
 - 2. all necessary permits have been issued and finalized; and
 - 3. all administrative fines or civil penalties have been paid; and
 - 4. the party requesting the issuance of the Notice of Compliance has paid an administrative fee to reimburse the City for all administrative costs.

D. Administrative costs may include costs incurred in the investigation, inspection, reinspection, title search, appeal hearing, and any other processing costs associated with the violations specified on the Notice of Violation.

E. If the Director denies a request to issue a Notice of Compliance, the Director shall serve the requesting party, the Responsible Person and the Property Owner with a written explanation within five (5) days from the inspection setting forth the reasons for the denial. The written explanation shall be served by any of the methods of service listed in this Chapter

F. The Director's decision denying a request to issue a Notice of Compliance constitutes the final decision in the matter and is not appealable.

Section 1.10.200 Prohibition against issuance of municipal permits.

For properties where a Notice of Violation has been recorded, the City may withhold permits for repair, construction and/or alteration on the affected property until a Notice of Compliance has been issued by the Director. The City may not withhold permits which are necessary to obtain a Notice of Compliance or which are necessary to correct serious health and safety violations.

Section 1.10.210 Cancellation of recorded notice of violation.

The Director shall record or cause to be recorded the Notice of Compliance with the San Joaquin County Recorder's Office. The recordation of the Notice of Compliance shall have the effect of canceling the recorded Notice of Violation.

Article III - ADMINISTRATIVE CITATIONS

Section 1.10.220 Administrative citations; authority.

A. Any person violating any provisions of this Code, adopted Uniform Codes or applicable state code may be issued an Administrative Citation by a Community Improvement Officer as provided in this Chapter.

B. Each and every day a violation of this Code, adopted Uniform Codes or applicable state code exists constitutes a separate and distinct offense.

C. An administrative fine shall be assessed by means of an Administrative Citation issued by the Community Improvement Officer and shall be payable directly to the City unless otherwise noted on the Citation.

D. Fines assessed by means of an Administrative Citation shall be collected in accordance with the procedures specified in this Chapter.

Section 1.10.230 Administrative citations; procedures.

A. Upon discovering any violation of this Code, adopted Uniform Codes or applicable state

codes, a Community Improvement Officer may issue an Administrative Citation to a Responsible Person in the manner prescribed in this Chapter. The Administrative Citation shall be issued on a form approved by the City Attorney.

B. If the Responsible Person is a commercial business, the Community Improvement Officer shall attempt to locate the business owner and issue the business owner an Administrative Citation. If the Code Enforcement Officer can only locate the manager of the commercial business, the Administrative Citation may be given to the manager of the business. A copy of the Administrative Citation shall also be mailed to the business owner or Responsible Person in the manner prescribed in this Chapter.

C. The Administrative Citation shall be signed by the issuing Code Enforcement Officer.

D. Method of Service.

1. Signature. Once the Responsible Person is located, the Code Enforcement Officer shall attempt to obtain the signature of that person on the Administrative Citation. However, if the Responsible Person refuses or fails to sign the Administrative Citation, it shall not affect the validity of the citation and subsequent proceedings.

2. If the Community Improvement Officer is unable to locate the Responsible Person, then the Administrative Citation shall be mailed to the Responsible Person in the manner prescribed in this Chapter.

3. Posting. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the Responsible Person in the manner prescribed by this Chapter.

E. A copy of the Administrative Citation shall thereafter be mailed to the Responsible Person and to the owner of the property if different from the Responsible Person in the manner prescribed by this Chapter. The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this Chapter.

Section 1.10.240 Contents of administrative citation.

Any Administrative Citation that is issued shall contain all of the following information:

A. The date and location of the violations and the approximate time the violations were observed;

B. The code sections violated and a brief description of how the sections are violated;

C. Where appropriate, the action required to correct the violations;

D. Set forth a deadline by which the violations must be corrected and the consequences of failing to comply;

E. The amount of fine imposed for the violations, if any;

F. An explanation as to how the fine shall be paid and the time period by which it shall be

paid, and the consequences of failure to pay the fine; and

G. Identify all rights and procedures of appeal.

Section 1.10.250 Appeal of administrative citation.

An appeal from the issuance of an Administrative Citation shall follow the procedures set forth in this Chapter.

Section 1.10.260 Fines for administrative citations.

A. If the Responsible Person fails to correct the violation, subsequent Administrative Citations may be issued for the same violations. The amount of the fine shall increase at a rate specified in subsection (B) below.

B. The fines assessed for each Administrative Citation issued for the same violations shall be as follows:

- | | |
|---|----------|
| 1. First Administrative Citation: | \$100.00 |
| 2. Second Administrative Citation: | \$250.00 |
| 3. Third and subsequent Administrative Citation(s): | \$500.00 |

C. Payment of the fine shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City.

D. All fines assessed shall be payable to the City of Lodi, unless otherwise directed on the citation.

E. The Community Development Director is authorized, under direction and upon approval of the City Attorney, to establish policies and procedures for the certification, decertification and conduct of the Community Awareness and Responsibility Education Classes, to establish that persons receiving a fine under an Administrative Citation have the option of attending a certified Community Awareness and Responsibility Education Class prior to the citation becoming delinquent in lieu of paying the fine. A person may not use this option more than once in any twelve (12)-month period.

F. For all delinquent, unpaid Administrative Citation fines there shall be a penalty imposed in the amount of ten percent (10%) of the citation fine amount, and an additional one percent (1%) per month of the total amount of such fine for each month during the time that said fine remains unpaid after its delinquency date. The delinquency date for an Administrative Citation fine shall be sixty (60) days following the imposition of the fine, or the appeal determination of the Administrative Hearing Officer, whichever is later.

Section 1.10.270 Failure to pay administrative citation fine.

The failure of any person to pay the fines assessed by an Administrative Citation within the time

specified on the Citation may result in the Director referring the matter to the Finance Department or other designated agent for collection. Alternatively, the Director shall pursue any other legal remedy to collect the fines including, but not limited to, those remedies provided in Title 1, Chapter 1.08 of this Code.

Section 1.10.280 Allocation of administrative citation fines.

Administrative fines collected pursuant to this Article shall be deposited into the Special Revenue Fund.

Article IV - ABATEMENT

Section 1.10.290 Abatements; declaration of purpose.

The City Council finds that it is necessary to establish appropriate procedures for the administrative and summary abatement of public nuisances and code violations. The procedures established in this Chapter are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address violations of this Code or applicable state codes. This Chapter governs all other nuisance abatement procedures established in other chapters of this Code unless other procedures are specifically stated to apply.

Section 1.10.300 Authority.

Any condition caused, maintained or permitted to exist in violation of any provisions of this Code or an applicable state code which constitutes a public nuisance may be abated by the City pursuant to the procedures set forth in this Article.

Section 1.10.310 General procedures.

A. Abatement Notice

1. Whenever the Director determines that public or private property or any portion of public or private property is a public nuisance as generally defined in Section 15.30.030 or as declared in any other specific section of this Code, including adopted Uniform Codes, or applicable state codes, an Abatement Notice may be issued to the Responsible Person to abate the public nuisance.

2. The Abatement Notice shall contain a description of the subject property in general terms reasonably sufficient to identify the location of the property. It shall refer to specific sections of this Code, adopted Uniform Codes or applicable state code violations which render the property a public nuisance.

3. The Abatement Notice shall describe the action required to abate the public nuisance which may include, but is not limited to: corrections, repairs, demolition, removal, obtaining the necessary permits, vacation of tenants or occupants or other appropriate action and shall establish time frames by which each action must occur.

4. The Abatement Notice shall explain the consequences should the Responsible Person fail to comply with the terms of the notice.

5. The Abatement Notice shall identify all applicable hearing and appeal rights.

B. Service of Abatement Notice

1. The Abatement Notice shall be served by any of the methods of service listed in this Chapter.

Section 1.10.320 Abatement of a public nuisance by the City.

A. Once the Director follows the procedures set forth herein and the time for compliance has lapsed, if the violations remain, the nuisance conditions may be abated by City personnel or by a private contractor.

B. City personnel or a private contractor can enter upon private property in a reasonable manner as provided by law to abate the nuisance conditions as specified in the Abatement Notice or Abatement Order.

C. If the Responsible Person abates the nuisance conditions before the City performs the actual abatement pursuant to an Abatement Notice or Abatement Order, the Director may still assess all costs incurred by the City against the Responsible Person pursuant to the procedures set forth herein.

D. When abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the Director. The report shall contain the names and addresses of the Responsible Persons of each parcel, the name and address of the Property Owner if different from the Responsible Person, the tax assessor's parcel number and a legal description of the property if the Responsible Person is an owner.

E. The Director shall schedule a confirmation of costs hearing before an Administrative Hearing Officer pursuant to the procedures set forth in this Chapter, unless waived in writing by all Responsible Persons.

F. All administrative and actual costs incurred by the city in abating the violations may be assessed and recovered against the Responsible Person pursuant to the provisions set forth in this Chapter.

Section 1.10.330 Summary abatement.

This Article governs the procedures relating to summary abatement of public nuisances.

Section 1.10.340 Authority.

Whenever the Director determines that an imminent health and safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the Responsible Person:

- A. Order the immediate vacation of any tenants and prohibit occupancy of the subject property until all repairs are completed; or
- B. Post the premises as unsafe, substandard or dangerous; or
- C. Board, fence or secure the building or site; or
- D. Raze and grade that portion of the premises or site to prevent further collapse and remove any hazard to the general public; or
- E. Make any minimal emergency repairs as necessary to eliminate any imminent health and safety hazard; or
- F. Take any other action as appropriate under the circumstances.

Section 1.10.350 Procedures.

- A. The Director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by the City during the summary abatement process shall be assessed, collected and recovered against the Responsible Person through the procedures outlined in this Chapter.
- B. The Director may also pursue any other administrative or judicial remedy established by law to abate any remaining public nuisance.

Article V – Administrative Penalties.

Section 1.10.360 Declaration of purpose.

The City Council finds that there is a need for an alternative method of enforcement for enforcing more serious violations of this Code, adopted Uniform Codes and applicable state codes. The City Council further finds that the assessment of civil penalties through an administrative hearing procedure for code violations is a necessary alternative method of code enforcement. The administrative assessment of civil penalties is in addition to any other administrative or judicial remedy established by law which may be pursued by City to address

serious violations of this Code, adopted Uniform Codes or applicable state codes.

Section 1.10.370 Authority.

A. Any person violating any provision of this Code, adopted Uniform Codes or applicable state code may be subject to the assessment of civil penalties pursuant to the administrative procedures provided in this Chapter.

B. Each and every day a violation of any provision of this Code or applicable state code exists constitutes a separate and distinct violation.

C. Civil penalties may be directly assessed in conjunction with a Notice and Order issued by the Director, or affirmed by a Hearing Officer. Civil penalties assessed shall be collected in accordance with the procedures specified in this Chapter.

D. Civil penalties for violations of any provision of this Code, adopted Uniform Codes or applicable state codes shall be assessed at a daily rate determined by the Director or Hearing Officer pursuant to the criteria listed in this Chapter. Except as authorized pursuant to State and Federal laws, the maximum civil penalty shall be \$1,000 per violation per day with the maximum amount of civil penalties not exceeding \$100,000 per parcel or structure for any related series of violations occurring within the twelve-month period immediately proceeding the latest violation.

Section 1.10.380 Procedures; issuance of notice and order.

A. Whenever the Director determines that a violation of one or more provisions of this Code, adopted Uniform Codes or applicable state codes has occurred or continues to exist, a civil penalty may be issued in conjunction with a Notice and Order to the Responsible Person.

B. The Notice and Order shall refer to all code sections violated and describe how each section is or has been violated.

C. The Notice and Order shall refer to the dates and locations of the violations.

D. The Notice and Order shall address the action required to correct the outstanding violations and establish time frames for completion.

E. The Notice and Order shall establish a daily amount of civil penalties. The Director shall determine the daily amount of civil penalties pursuant to the criteria in set forth in this Article.

F. The Notice and Order shall identify a date when the civil penalties began to accrue and a date when the assessment of civil penalties ended, unless the violation is continuous. In the case of a continuous violation, there shall be an ongoing assessment of penalties at the daily rate established in the Notice and Order until the violations are corrected.

G. If a Director determines that the violations are continuing, the Notice and Order shall demand that the Responsible Person cease and desist from further action causing the violations, or take affirmative action to cease from maintaining or permitting the violation to exist, and commence and complete all action to correct the outstanding violations under the guidance

of the appropriate City Departments.

H. The Notice and Order shall enumerate any other consequences should the Responsible Person fail to comply with the terms and deadlines as prescribed in the Notice and Order.

I. The Notice and Order shall identify appropriate hearing procedures as required by this Chapter.

J. The Notice and Order shall be served upon the Responsible Person by any one of the methods of service listed in this Chapter.

K. The Notice and Order shall identify the factors used by the Director in determining the duration and the daily amount of civil penalties.

L. More than one Notice and Order may be issued against the same Responsible Person if it encompasses either different dates or different violations.

Section 1.10.390 Determination of civil penalties.

A. In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered the violations as evidenced by the issuance of a Notice of Violation or any other written correspondence.

B. The assessment of civil penalties shall end when all action required by the Notice and Order has been completed.

C. In determining the amount of the civil penalty to be assessed on a daily rate, the Director may consider some or all of the following factors:

1. The duration of the violation.
2. The frequency or recurrence of the violation.
3. The seriousness of the violation.
4. The history of the violation.
5. The Responsible Person's conduct after issuance of the Notice and Order.
6. The good faith effort by the Responsible Person to comply.
7. The economic impact of the penalty on the Responsible Person.
8. The impact of the violation upon the community.
9. Any other factors that justice may require.

Section 1.10.400 Recovery of civil penalties

The Director may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including, but not limited to, the recordation of a Code Enforcement Lien pursuant to the procedures set forth in this Chapter. If unable to collect the obligation, the Director may refer the obligation to the City Attorney to file a court action to recover these penalties and costs.

Section 1.10.410 Cancellation of code enforcement lien.

Once payment in full is received for the outstanding civil penalties and costs or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the Director shall, within ten (10) days from the date payment is made or decision is final, record a Notice of Satisfaction with the San Joaquin County Recorder's Office. The Notice of Satisfaction shall include the same information as provided for in the original Code Enforcement Lien. Such Notice of Satisfaction shall cancel the Code Enforcement Lien.

Section 1.10.420 Administrative costs.

The Director or Hearing Officer is authorized to assess any reasonable administrative costs. Administrative costs may include scheduling and processing of the hearing and all subsequent actions.

Section 1.10.430 Failure to comply with notice and order.

The Director shall request the City Attorney to appoint a Hearing Officer and the Director shall establish a date, time and place for the civil penalties hearing in accordance with this Chapter when the Responsible Person fails to comply with the terms of the Notice and Order. Failure to comply includes failure to pay the assessed civil penalties, failure to commence and complete corrections by the established deadlines or failure to refrain from continuing violations of this Code, adopted Uniform Codes or applicable state codes.

Section 1.10.440 Civil penalties hearing.

- A. The procedures for the civil penalties hearing are the same as the hearing procedures set forth in this Chapter.
- B. The Hearing Officer shall only consider evidence that is relevant to the following issues: (1) whether the Responsible Person has caused or maintained a violation of this Code or applicable state code that existed on the dates specified in the Notice and Order; and (2) whether the amount of civil penalties assessed by the Director pursuant to the procedures and criteria outlined in this Chapter was reasonable.

Article VI – Administrative Hearings

Section 1.10.450 Administrative hearing procedures.

These sections establish the procedures for the use of Administrative Hearing Officers and the procedures governing administrative hearings.

- A. Qualifications of Administrative Hearing Officer. The City Attorney shall promulgate rules and procedures as are necessary to establish a list of qualified persons who are capable of acting on behalf of the City as Hearing Officers.
- B. Appointment of Administrative Hearing Officer. Hearing Officers presiding at administrative hearings shall be appointed by the City Attorney and compensated by the City. The City Attorney shall develop policies and procedures relating to the appointment and

compensation of Hearing Officers.

C. Disqualification of Hearing Officer. Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. Rules and procedures for the disqualification of a Hearing Officer shall be promulgated by the City Attorney.

D. Powers of Hearing Officer.

1. The Hearing Officer may continue a hearing based on good cause shown by one of the parties to the hearing or if the Hearing Officer independently determines that due process has not been adequately afforded.

2. The Hearing Officer, upon receipt of a written request which is submitted no later than five (5) days before the hearing, shall subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena. The City Attorney shall develop policies and procedures relating to the issuance of subpoenas in administrative hearings, including the form of the subpoena and related costs.

3. The Hearing Officer has continuing jurisdiction over the subject matter of an administrative hearing for the purposes of granting a continuance, ensuring compliance with an Administrative Order, modifying an administrative order, or where extraordinary circumstances exist granting a new hearing.

4. The Hearing Officer has the authority to require the Responsible Person to post a code enforcement performance bond to ensure compliance with an Administrative Order.

E. Failure to Obey Subpoena. It is unlawful for any person to refuse to obey a subpoena issued by a Hearing Officer.

Section 1.10.460 Procedures for requesting an appeals hearing.

A. A person served with one of the following documents, order or notices may file an appeal within ten (10) calendar days from the service of the notice:

1. Any civil penalty notice and order issued;
2. An administrative citation issued pursuant to this Chapter;
3. An application for a waiver of fees.

B. The appeal shall be made in writing stating the grounds for the appeal and filed with the Director on or before the tenth day after service.

Section 1.10.470 Procedures for notification of administrative hearing.

A. Where an administrative remedy or proceeding provides for an appeal procedure, the Director shall request the City Attorney to appoint a Hearing Officer and to schedule a day, time

and a place for the hearing.

B. Written notice of the time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the hearing to the Responsible Person.

C. The format and contents of the hearing notice shall be in accordance with rules and policies promulgated by the City Attorney.

D. The notice of hearing shall be served by any of the methods of service listed in this Chapter.

Section 1.10.480 Procedures at administrative hearing.

A. Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The procedure and format of the administrative hearing shall follow the procedures promulgated by the City Attorney.

B. The City bears the burden of proof at an administrative hearing to establish the existence of a violation of this Code, adopted Uniform Codes or applicable state codes.

C. The standard of proof to be used by the Hearing Officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

D. Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his case.

Section 1.10.490 Failure to attend administrative hearing.

Any Responsible Person who requests a hearing or whose actions are the subject of an administrative hearing and who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that the hearing was properly noticed.

Section 1.10.500 Administrative order.

A. The decision of the Hearing Officer shall be entitled "Administrative Order" and shall be issued in accordance with this Chapter and the rules and procedures promulgated by the City Attorney.

B. Once all evidence and testimony are completed, the Hearing Officer shall issue an Administrative Order which affirms, modifies or rejects the Director's action. In the case of a notice and order of civil penalty, the Administrative Order may affirm, modify or reject the daily rate or duration of the civil penalties depending upon the review of the evidence and may increase or decrease the total amount of civil penalties and costs assessed.

C. The Hearing Officer may issue an Administrative Order that requires the Responsible Person to cease from violating this Code, adopted Uniform Codes or applicable state codes and to make necessary corrections within a specific time frame.

D. As part of the Administrative Order, the Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the Responsible Person's ability to complete compliance by specified deadlines.

E. The Hearing Officer may issue an Administrative Order which imposes additional civil penalties that will continue to be assessed until the Responsible Person complies with the Hearing Officer's decision and corrects the violation.

F. The Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the Administrative Order.

G. The Administrative Order shall become final on the date of service of the Order.

H. The Administrative Order shall be served on all parties by any one of the methods listed in this Chapter.

Section 1.10.510 Judicial review.

Once an Administrative Order becomes final as provided in this Chapter, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure Section 1094.6 or as may be amended hereafter.

Section 1.10.520 Failure to comply with the administrative order misdemeanor.

A. After the Hearing Officer issues an Administrative Order, the Director shall monitor the violations and determine compliance.

B. Upon the failure of the Responsible Person to comply with the terms and deadlines set forth in the Administrative Order, the Director may use all appropriate legal means to recover the civil penalties, administrative costs and obtain compliance with the Administrative Order, including seeking an injunction.

C. Failure to comply with an Administrative Order constitutes a misdemeanor.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

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SECTION 5. This ordinance or a summary thereof as may be permitted by law shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi and shall take effect thirty days from and after its passage and approval.

Approved this ____ day of April, 2006

SUSAN HITCHCOCKJOHN BECKMAN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

=====
State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held April ____, 2006, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held April ____, 2006, by the following vote:

AYES: COUNCIL MEMBERS –

NOES; COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

By _____
Janice D. Magdich
Deputy City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE BY REPEALING CHAPTER 2.34 ADMINISTRATIVE PROCEDURES FOR ADMINISTRATIVE PROCEEDINGS IN ITS ENTIRETY; REPEALING AND REENACTING SECTION 3.01.460 BUSINESS TAX CERTIFICATION - "ENFORCEMENT"; REPEALING AND REENACTING SECTION 10.56.020 (J), (K), (L)-(1) REMOVAL OF VEHICLES - "REMOVAL FROM PRIVATE PROPERTY"; REPEALING AND REENACTING CHAPTER 15.24 "HOUSING CODE" SECTIONS 15.24.30- 15.24.70, AND SECTIONS 15.24.090- 15.24.100; REPEALING AND REENACTING SECTIONS 15.28.030, 15.28.070, 15.28.080, 15.28.090, 15.28.100, 15.28.120, 15.28.140 ABATEMENT OF DANGEROUS BUILDINGS CODE; REPEALING SECTIONS 15.30.040 - 15.30.220 AND REENACTING SECTIONS 15.30.040-15.30.060 RELATING TO PROPERTY MAINTENANCE AND THE DESIGNATION OF CERTAIN KINDS OF NUISANCES; AND AMENDING CHAPTER 15.31 - WEED AND REFUSE ABATEMENT BY ADDING SECTIONS 15.31.150 - 15.31.170

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Chapter 2.34 "Administrative Procedures for Administrative Proceedings" is hereby repealed in its entirety.

Section 2. Lodi Municipal Code Section 3.01.460 "Enforcement" is hereby repealed and reenacted to read as follows:

- A. Duties of the Finance Director. It shall be the duty of the finance director to enforce each and all of the provisions of this chapter. For purposes of such enforcement, the finance director and finance technicians (or equivalent position as it may be renamed from time to time) are "officers" who may issue citations to violators of this chapter pursuant to Chapter 1.10 of this code.
- B. Inspections. The finance director, in the exercise of the duties imposed by the provisions of this section, and acting through deputies of duly authorized assistants, shall have the right to enter and examine all places of business free of charge during normal business hours to ascertain whether the provisions of this chapter are being complied with.
- C. Penalty for Violation. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 3. Lodi Municipal Code Section 10.56.020 (J), (K), (L)-(1) "Removal from Private Property" is hereby repealed and reenacted to read as follows:

- J. Public Hearing. Upon request by the owner of the vehicle or owner of the land, received by the community development director within ten days after the mailing of the notices of intention to abate and remove, a public hearing shall be held in accordance with the provisions of Chapter 1.10 of this code on the question of abatement and removal of the vehicle or parts thereof as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of the administrative costs and the cost of removal of the vehicle or parts thereof against the property on which it is located.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his/her land within such ten-day period, said statement shall be construed as a request for a hearing, which does not require the owner's presence. Notice of the hearing shall be mailed, by registered mail, at least ten days before the hearing, to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that

identification numbers are not available to determine ownership. If such a request for hearing is not received within said ten days after mailing of the notice of intention to abate and remove, the city shall have the authority to abate and remove the vehicle or parts thereof as a public nuisance without holding a public hearing.

K. Public Hearing by Administrative Hearing Officer

1. All hearings under this chapter shall be held before the Administrative Hearing Officer in accordance with Section 1.10 of this Code, who shall hear all facts and testimony he/she deems pertinent. Such facts and testimony may include testimony on the condition of the vehicle or parts thereof and the circumstances concerning its location on the private property or public property. The Administrative Hearing Officer shall not be limited by the technical rules of evidence. The owner of the land may appear in person at the hearing or present a sworn written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with reasons for such denial.
2. The Administrative Hearing Officer may impose such conditions and take such other action he/she deems appropriate under the circumstances to carry out the purpose of this chapter. The Administrative Hearing Officer may delay the time for removal of the vehicle or parts thereof if, in his/her opinion, the circumstances justify it. At the conclusion of the public hearing, the Administrative Hearing Officer may find that a vehicle or parts thereof has been abandoned, wrecked, dismantled or is inoperative on private or public property and order the same removed from the property as a public nuisance and disposed of as hereinafter provided and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle or parts thereof and the correct identification number and license number of the vehicle, if available at the site.
3. If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that the owner has not subsequently acquiesced in its presence, the Administrative Hearing Officer shall not assess the costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.
4. If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his/her land but does not appear, or if an interested party makes a written presentation to the Administrative Hearing Officer but does not appear, the owner or interested party shall be notified in writing of the decision.

L. Appeal to Council.

1. Any interested party may appeal the decision of the Administrative Hearing Officer in accordance with the provisions of Chapter 1.10 of this Code.

Section 4. Lodi Municipal Code Section 15.04.060 "Violation-Misdemeanor" is hereby amended by adding Section (C), and shall read as follows:

C. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 5. Lodi Municipal Code Chapter 15.24 "Housing Code" Sections 15.24.30 – 15.24.70, Sections 15.24.90 - 15.24.100 are hereby repealed and reenacted to read as follows:

Section 15.24.030 - Section 401 amended – Definitions

Section 401, Definitions, of the Uniform Housing Code, 1997 Edition, adopted by Section

15.24.010, is amended as follows:

A. Add to subparagraph "Board of Appeals" to read as follows:

Whenever in this Code reference is made to the "Board of Appeals," "Appeals Board," or "Housing Advisory Board," it shall mean the Administrative Hearing Officer.

B. Add subparagraph "Building Officials" to read as follows:

Whenever in this Code reference is made to the "Building Official" it shall mean the legally designated Chief Building Inspector or Community Improvement Manager of the City of Lodi or his authorized representative.

C. Change subparagraph "Health Officers" to read:

Whenever in this Code reference is made to the "City Health Officer" or "Health Officer" it shall mean the legally designated Director of the San Joaquin County Environmental Health Division or his authorized representative.

D. Add subparagraph "Fire Marshal" to read as follows:

Whenever in this Code reference is made to the "City Fire Marshal" or "Fire Marshal" it shall mean the Fire Marshal of the City of Lodi or his authorized representative.

Section 15.24.040 - Sections 1201.1, 1201.2 and 1201.3 amended – Appeal to Administrative Hearing Officer

Sections 1201.1, 1201.2 and 1201.3 of the Uniform Housing Code, 1994 Edition, adopted by Section 15.24.010, are amended to read as follows:

Section 1201. Appeal to Administrative Hearing Officer

Any person aggrieved by any order of the Building Official hereunder to repair, vacate and repair, or demolish any building or structure, or portion thereof, may appeal such order to the Administrative Hearing Officer. The appeal, which shall be in writing and which shall state the substance of the order appealed from, shall be submitted to the Administrative Hearing Officer within ten (10) days from the date of personal service or mailing of the order which is being appealed. The Administrative Hearing Officer shall set the matter for hearing. Notice of the date, hour and place of hearing shall be posted and served at least ten (10) days before the date set for the hearing in the manner and upon the persons specified in Sections 1101.3, 1101.4 and 1101.5. The notice shall order all interested parties who desire to be heard to appeal and show cause, if any they have, why the building or structure, or portion thereof, involved in the proceedings should not be repaired, vacated and repaired, or demolished.

Section 15.24.050

Section 1205 of the Uniform Housing Code, 1994 Edition, adopted by Section 15.24.010, is added to read as follows:

Hearing before Administrative Hearing Officer. At the time stated in the notice, the Administrative Hearing Officer shall hold a hearing, and hear and consider any evidence offered by the Building Official, owner, occupant or person in charge and in control, mortgagee or beneficiary under any deed of trust, lessee, or any other persons having any estate or interest in said building or structure, pertaining to the matters set forth in the Notice to Repair, Vacate and Repair or Demolish. Upon the conclusion of the hearing, the Administrative Hearing Officer shall render its decision.

Section 15.24.060 - Section 1206 added – Order of the Administrative Hearing Officer

Section 1206 of the Uniform Housing Code, 1997 Edition, adopted by Section 15.24.010, is added to read as follows:

Order of the Administrative Hearing Officer. If, from a full and fair consideration of the evidence and testimony received at the hearing, the Administrative Hearing Officer shall determine that the building or structure, or any portion thereof, is unsafe and a public nuisance, then it shall overrule the appeal and issue an order certified by the City Clerk:

1. That the building or structure must be repaired, vacated and repaired, or demolished;
2. That the occupant, lessee, or other person in possession must vacate said building or structure, or that he may remain in possession while repairs are being made;
3. That any mortgagee, beneficiary under a deed of trust, or any other persons having a interest or estate in the said building or structures may, at his own risk, repair, vacate and repair, or demolish it.

The order shall (i) set forth the information required in Section 1101.2; (ii) contain a statement of the particulars that render the building or structure unsafe and a public nuisance; and (iii) contain a statement of the things required to be done. The order shall specify (i) the time within which the work required must be commenced, which shall be not less than ten days after the issuance of the order, and (ii) a reasonable time within which the work shall be completed.

Section 15.24.070 – Section 1207 added – Serving and Posting of Order of Administrative Hearing Officer

Section 1207 of the Uniform Housing Code, 1997 Edition, adopted by Section 15.24.010, is added to read as follows:

Serving and Posting of Order of Administrative Hearing Officer. Copies of the order of the Administrative Hearing Officer shall be posted on the building or structure involved and served involved and served in the manner and upon the persons specified in Section 1101.3, 1101.4 and 1101.5.

Section 15.24.090 – Sections 1501.1 and 1501.2 amended – Sale, Repair or Demolition

Sections 1501.1 and 1501.2 of the Uniform Housing Code, 1997 Edition, adopted by Section 15.24.010, are amended to read as follows:

Section 1501. Sale, Repair or Demolition. Whenever an order to repair, vacate and repair, or demolish any building or structure, or any portion thereof, has not been complied with within the time set by the Building Official, or by the Administrative Hearing Officer, whether under appeal or not, the Administrative Hearing Officer shall have the power, in addition to any other remedy herein provided, to:

1. Cause the material of any such building or structure to be sold in any manner that the Administrative Hearing Officer may determine upon; provided, however, that any such sale shall be upon condition that the building or structure be forthwith demolished, the wreckage and debris thereof removed and the lot cleaned. The Administrative Hearing Officer may sell any such building singly or otherwise. Any surplus from the sale of any such building or structure, or group of buildings and structures, over and above the cost of demolition and of cleaning the site shall be retained to be distributed to the parties or persons lawfully entitled thereto.
2. Cause the building or structure to be repaired or demolished. The cost thereof shall be assessed against the property upon which the particular building or structure is located or the

Repair and Demolition Fund. The repair of any building or structure, or sale of the materials thereof, shall be by a contract awarded following advertisement for bids, to the lowest and best bidder in the case of repair or demolition work and to the highest and best bidder in the case of the sale of material.

Arrangements, as prescribed by the Administrative Hearing Officer in this section, preparing for the repair, demolition, or sale of materials, of or from any structure discussed in this Code shall be the responsibility of the Building Official. However, no such arrangements nor other work to that end shall be initiated prior to specific instructions from the Administrative Hearing Officer indicating such action.

15.24.100 – Violations – Penalty

- A. No person, whether as owner, lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done, contrary to, or in violation of, any of the provisions of this housing code.
- B. Any person, firm or corporation violating any provision of this code shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.

C. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 6. Lodi Municipal Code Chapter 15.28 – Dangerous Building Code Sections 15.28.030, 15.28.070, 15.28.080, 15.28.090, 15.28.100, 15.28.120, 15.28.140 are hereby repealed and reenacted to read as follows:

Section 15.28.030 – Section 303 added – Board of Appeals

Section 303, Board of Appeals, is added to the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, as follows:

Whenever in this Code reference is made to the “Board of Appeals” it shall mean the Administrative Hearing Officer of the City of Lodi.

Section 15.28.070 – Section 501.1, 501.2 and 501.3 added – Appeal to Administrative Hearing Officer

Section 501.1, 501.2 and 501.3 of the Uniform Code for the Abatement of Dangerous Buildings, 1994 Edition, adopted by Section 15.28.010, is added to read as follows:

Section 501 Appeal to Administrative Hearing Officer.

Any person aggrieved by any order of the Building Official hereunder to repair, vacate and repair, or demolish any building or structure, or portion thereof, may appeal such order to the Administrative Hearing Officer. The appeal which shall be in writing and which shall state the substance of the order appealed from, shall be submitted to the Administrative Hearing Officer within ten (10) days from the date of personal service or mailing of the order which is being appealed. The Administrative Hearing Officer shall set the matter for hearing. Notice of the date, hour and place of the hearing shall be posted and served at least ten (10) days before the date set for the hearing in the manner and upon the person specified in Section 401.3, 401.4 and 401.5. The notice shall order all interested parties who desire to be heard to appear and show cause, if any they have, why the building or structure, or portion thereof, involved in the proceedings should not be repaired, vacated and repaired or demolished.

Section 15.28.080 – Section 505 amended – Hearing Before Administrative Hearing Officer.

Section 505 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Hearing Before Administrative Hearing Officer. At the time stated in the notice, the City Council shall hold a hearing, and hear and consider any evidence offered by the Building Official, owner, occupant or person in charge and control, mortgagee or beneficiary under any deed of trust, lessee, or any other person having any estate or interest in said building or structure, pertaining to the matters set forth in the Notice to Repair, Vacate and Repair, or Demolish. Upon the conclusion of the hearing, the Administrative Hearing Officer shall render its decision.

Section 15.28.090 – Section 506 amended – Order of Administrative Hearing Officer.

Section 506 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Order of Administrative Hearing Officer. If, from a full and fair consideration of the evidence and testimony received at the hearing, the Administrative Hearing Officer shall determine that the building or structure, or any portion thereof, is unsafe and a public nuisance, then it shall overrule the appeal and issue an order certified by the City Clerk;

1. That the building or structure must be repaired, vacated and repaired, or demolished;
2. That the occupant, lessee, or other person in possession must vacate said building or structure, or that he may remain in possession while repairs are being made;
3. That any mortgagee, beneficiary under a deed of trust, or any other person having an interest or estate in said building or structure may, at his own risk, repair, vacate and repair, or demolish it.

The order shall (i) set forth the information required in Section 401.2 Item 1; (ii) contain a statement of the particulars that render the building or structure unsafe and a public nuisance; and (iii) contain a statement of the things required to be done. The order shall specify (i) the time within which the work required must be commenced, which shall be not less than ten days after the issuance of the order, and (ii) a reasonable time within which the work shall be completed.

Section 15.28.100 – Section 507 amended – Serving and Posting of Order of Administrative Hearing Officer

Section 507 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Serving and Posting of Order of Administrative Hearing Officer. Copies of the order of the Administrative Hearing Officer shall be posted on the building or structure involved and served in the manner and upon the persons specified in Section 401.3, 401.4 and 401.5.

Section 15.28.120 – Section 80.1 amended – Sale, Repair or Demolition

Section 801.1 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Section 801.1. Sale, Repair or Demolition. Whenever an order to repair, vacate and repair, or demolish any building or structure, or any portion thereof, has not been complied with within the time set by the Building Official, or by the Administrative Hearing Officer, whether under appeal or not, the Administrative Hearing Officer shall have the power, in addition to any other remedy herein

provided, to:

1. Cause the material of any such building or structure to be sold in any manner that the Administrative Hearing Officer may determine upon; provided, however, that any such sale shall be upon condition that the building or structure be forthwith demolished, the wreckage and debris thereof removed and the lot cleaned. The Administrative Hearing Officer may sell any such building singly or otherwise. Any surplus from the sale of any such building or structure, or group of buildings and structures, over and above the cost of demolition and of cleaning the site shall be retained to be distributed to the parties or persons lawfully entitled thereto.
2. Cause the building or structure to be repaired or demolished. The cost thereof shall be assessed against the property upon which the particular building or structure is located or the Repair and Demolition Fund. The repair or demolition of any building or structure, or sale of the materials thereof, shall be by a contract awarded following advertisement for bids, to the lowest and best bidder in the case of repair or demolition work and to the highest and best bidder in the case of the sale of material.

Arrangements, as prescribed by the Administrative Hearing Officer in this Section, preparing for the repair, demolition, or sale of materials, of or from any structure discussed in this Code shall be the responsibility of the Building Official. However, no such arrangements or other work to that end shall be initiated prior to specific instructions from the Administrative Hearing Officer indicating such action.

Section 15.28.140 – Violation – Penalty

- A. No person, whether as owner, lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this chapter.
- B. Any person, firm or corporation violating any provision of this code shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.
- C. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 7. Lodi Municipal Code Chapter 15.30 Property Maintenance and Designation of Certain Kinds of Nuisances Sections 15.30.040 – 15.30.220 are hereby repealed and Sections 15.30.040-15.30.060 are reenacted as follows:

Section 15.30.040 Declaration of Public Nuisance

Any property found to be maintained in violation of the foregoing section is declared to be a public nuisance, and shall be subject to the administrative procedures set forth in Chapter 1.10. The procedures for abatement set forth therein shall not be exclusive, and shall not, in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner.

Section 15.30.050 Alternative Actions Available

Nothing in this chapter shall be deemed to prevent the city council from ordering the commencement of a civil proceeding to abate the nuisance pursuant to applicable law or restricting the city from pursuing any other remedy available under applicable law.

Section 15.30.060 Violation – Penalty

Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 8. Lodi Municipal Code Chapter 15.31 – Weed and Refuse Abatement is hereby amended by adding Sections 15.31.150 – 15.31.170 and shall read as follows:

Section 15.31.150 Declaration of Public Nuisance

Any property found to be maintained in violation of the foregoing section is declared to be a public nuisance, and shall be subject to the administrative procedures set forth in Chapter 1.10. The procedures for abatement set forth therein shall not be exclusive, and shall not, in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner.

Section 15.31.160 Alternative Actions Available

Nothing in this chapter shall be deemed to prevent the city council from ordering the commencement of a civil proceeding to abate the nuisance pursuant to applicable law or restricting the city from pursuing any other remedy available under applicable law.

Section 15.31.170 Violation – Penalty

Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 9 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 10. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 11. This ordinance shall be published one time in the “Lodi News Sentinel,” a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Attest:

Approved this ____ day of _____, 2006.

SUSAN J. BLACKSTON
City Clerk

SUSAN HITCHCOCK
Mayor

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held April 5, 2006, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2006, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. _____ was approved and signed by the Mayor of the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney